CF0000060194

(2)

BEFORE THE HON'BLE HIGH COURT OF MADHYA PRADESH
AT JABALPUR M.P.

Criminal Appeal No. 1402 of 98

Sahani Ram aged 37 years,
Son of Vishram Patel,
Resident of Gidhauri,
Police Station: Bilaigarh,
District: Raipur M.P. .. Appellant/Accused
(In Jail from Jail)

V E R S U S

State of Madhya Pradesh,
Through: Police Station,
Bilaigarh, Distt. Raipur M.P. .. Respondent.

APPEAL UNDER SECTION 374(2) Cr.P.C.

(12)

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आदेश पत्रक

मामला क्रमांक Cr.A. 1402/98 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C. BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1402 of 1998

Appellant : Sahani Ram

Vs.

Respondent : State of Madhya Pradesh

Shri N.K.Chatterjee, learned counsel for the appellant.

Shri D.K. Gwalre learned P.L. for the respondent/State.

ORAL JUDGMENT
(21.04.2006)

Per L.C. Bhadoo , J

The appellant has preferred this appeal under section 374 (2) of the Code of Criminal Procedure against the judgment dated 28.4.1998 passed by Special Judge, Raipur in Session Trial No. 73/1997 convicting him under sections 302 and 324 of the Indian Penal Code and sentencing to undergo imprisonment for life and RI for six months respectively on both counts.

2. Case of the prosecution in brief is that PW-1 Parasram gave merg intimation Ex. P-1 in police station Bilaigarh to the effect that on that day at about 2 to 3 p.m. when he along with Itwari, Ramlila, Chhedudas, Siyalal and Thakur Luku driver was sitting in the Parchhi of the house of Sahani, at that time wife of Sahani namely Shyambai and mother Rathbai came

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

crying out of the house and said that Sahani was committing suicide with the help of rope and on their intervention he chased them. Thereupon he went inside the house of Sahani and Sahani got furious and assaulted him with axe on his neck on which he snatched axe from him and ran away from his house and after keeping the said axe in his house he came out, and saw accused coming out with wooden plank and after seeing this, the persons who were sitting there ran away but the person known as Thakur did not leave the place of occurrence. Thereupon Sahani assaulted Thakur on his head with wooden plank as a result of which Thakur fell down and died spontaneously. On receiving this report Ex. P-1 the Station House Officer, Police Station, Bilaigarh registered the crime No. 62/1997 for commission of the offences under sections 302 and 307 of the IPC under P-2. On production by Parasram weapon of offence axe was taken into possession under P-3. Site plan Ex. P-4 was prepared. The wooden plank was taken into possession under Ex. P-5. Blood stained and plain soil, one broken wooden plank, one pair of shoes made of plastic and one towel were taken into possession from the place of occurrence under Ex. P-7. The inquest report P-8 of the dead body was prepared. Memorandum Ex. P-10 was given by the accused regarding the wooden plank and in pursuance of the said information wooden plank was taken into possession. Body of Luku was sent for post mortem examination to Primary Health Centre, Bilaigarh where Dr. C.S. Patel conducted the post mortem examination and prepared the post mortem report Ex P-12. The injuries of Paras were examined by the doctor of Primary Health Centre,

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Bilaigarh and injury report P-13 was prepared. After completion of the investigation charge sheet was filed in the Court of Special Judge, Raipur.

3. Prosecution in order to establish the charge against the accused/appellant examined as many as 15 witnesses. On the other hand statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he denied the prosecution evidence appearing against him and stated that he is innocent and has been falsely implicated in the crime in question. Learned Special Judge after hearing counsel for both the parties convicted and sentenced the accused/appellant as mentioned in paragraph one of this judgment.

4. We have heard Shri N.K. Chaterjee counsel for the appellant and Shri D.K. Gwalare, Dy, GA for the State.

5. Homicidal death of Luku alias Thakur is not in dispute.

6. As far as involvement of accused/appellant in assaulting the deceased is concerned PW-1 Parasram who is the injured witness has stated that on the fateful day mother of the accused informed them when they were sitting on the Chabutra that Sahaniram, accused was committing suicide with the help of rope, on which he went there. Accused Sahani assaulted him with axe and thereafter assaulted Luku driver with club. Luku is also known as Thakur and he died on the spot. In the cross examination he has stated that he had no animosity against the accused. The house of Thakur is in front of his house, therefore he used to visit the house of Thakur. PW-2 Chhedudas has stated that on

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the fateful day when they were sitting on the Chabutara mother of the accused came there and said that accused was committing suicide with the help of rope and requested for help, on which Parasram went inside the house. Accused Sahaniram came out of the house with axe and assaulted Parasram on his neck as a result of which blood stated oozing out and Parasram snatched the axe and ran away. PW-7 Dasin Bai – wife of Parasram, the injured witness, has stated that accused assaulted deceased Luku with lathi as a result of which he died. PW-14 Itwari who was also sitting with Parasram on the Chabutara at the time of incident, has stated that when he was sitting on Chabutara near the house of Sahani mother of Sahani shouted from inside the house that her son was committing suicide with the help of rope and when Parasram went inside the house to dissuade Sahani not to do so, Sahani assaulted Parasram with axe which hit on the left side of his neck. Parasram snatched the axe from Sahani. Luku driver was also there who was sitting under the shadow. After Parasram ran away with axe, the accused went inside the house, brought the wooden plank and assaulted Luku driver as a result of which he died. Therefore, in view of the evidence of PW-1 Parasram, injured witness, PW-7 Dasin Bai and PW-14 Itwari Bai it has been established that accused assaulted the deceased with wooden plank and in the cross examination of these witnesses the defence has not been able to elicit anything which makes the evidence of these witnesses unreliable or untrustworthy.

7. Learned counsel for the accused/appellant argued that there is contradiction in the First Information Report and diary statement to the

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effect that Parasram has stated in the F.I.R. that accused Sahani assaulted with wooden plank whereas in the Court statement he has stated that accused assaulted with lathi.

8. It is admitted position that the accused assaulted the deceased with a piece of wood used in the cot for fixing the leg of cot and in lathi and wooden plank there is no much difference, therefore we do not find any substance in the argument advanced by counsel for the appellant as there is no material contradiction and as has been mentioned above from the evidence of Parasram, Itwari and Dasin Bai, involvement of the accused in assaulting the deceased is established. Similarly, from the evidence PW-1 Parasram, PW-2 Chhedudas and PW-13 Dr. C.S. Patel it is also established the accused caused voluntary simple injury to Parasram with axe.

9. In view of the above legal and clinching evidence, we are of the considered opinion that the trial Court has not committed any illegality or infirmity in convicting the accused/appellant under Section 302 and 324 of the IPC. Accordingly, the appeal being devoid of merits deserves to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

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